

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-06**

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**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>ST</sup> DOLPHIN PARKING**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

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**RESPONDENTS' RESPONSE TO COMPLAINANTS'  
OPPOSED EMERGENCY MOTION FOR ENLARGEMENT  
OF TIME TO FILE DOCUMENTS**

COME NOW The Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation (collectively "Respondents"), by and through the undersigned, and hereby request that the honorable commission deny Complainants' Opposed Emergency Motion for Enlargement of Time to File Documents.

a. *Complainants' motion is untimely.*

Pursuant to the your Honor's January 14, 2015, Order Amending the September 30, 2014, Discovery and Briefing Schedule, Complainants are due to file their proposed findings of fact, brief, and appendix by May 1, 2015. On April 29, 2015, Complainants filed an Emergency Motion for Enlargement of Time to File Documents under 46 C.F.R. § 502.102. 46 C.F.R. § 502.102 requires motions to enlarge the time for filing to be submitted at least five (5) days before the scheduled date for filing. 46 C.F.R. § 502.102(a) (emphasis added). Since

Complainants filed their motion a mere two days before the deadline for their findings of fact, the motion was untimely.

b. *Complainants cannot show good cause for failing to make a timely motion, or for extending the current deadline.*

1. Although the Commission may grant a request to enlarge the time to file for good cause, this is not an instance in which the Commission should do so. 46 C.F.R. § 502.102; Fed. R. Civ. P. 6(b) (1(A).
2. The Commission should deny Complainants' Emergency Motion to Enlarge the Time for Filing because Complainants have failed to demonstrate good cause why their motion should be granted, and they have failed to show good cause for not filing it on a timely basis. *Id.*
3. Complainants have been aware of the allegedly "newly discovered evidence" regarding Clear Lake Shuttle for months. Their failure to diligently investigate this issue during the discovery period is not grounds for enlargement. Moreover, the statements attributed in the Motion to Mr. Jim Harrison of Clear Lake Shuttle are not true, and Complainants know it.
4. Specifically, Complainants' assertion in Paragraph 4 of their Motion, that "the Port of Galveston did not charge Clear Lake Shuttle trip fees for accessing the Cruise Terminal until recently," is false. On January 12, 2015, Respondents produced invoices showing access fees charged to Clear Lake Shuttle, among others.<sup>1</sup> The invoices pertaining to

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<sup>1</sup> A true and correct copy of the invoices produced by Respondent Board of Trustees pertaining to Clear Lake Shuttle are attached hereto as Exhibit A. Additionally, the Board's Records relating to Moody Gardens Hotel and the San Luis Resort and Conference Center, which the Board of Trustees previously produced, are attached hereto as Exhibits B and C.

Clear Lake Shuttle date back to April of 2012 and were addressed to the attention of Mr. James Harrison.<sup>2</sup>

5. Complainants' erroneous assertion that shuttle companies have somehow been allowed to access the terminal without ever being assessed access fees is not a new one. In fact, Complainants asserted in their Amended Complaint that the Board of Trustees did not enforce its tariff against entities obligated to pay trip fees.<sup>3</sup>
6. Complainants did not "just learn" about the issues regarding Clear Lake Shuttle. In his February 5, 2015, deposition, Jason Hayes of EZ Cruise Parking claimed he knew Clear Lake Shuttle was engaged by the hotels to provide shuttle bus services for their guests. He stated that he had spoken to the owner of the company about hiring Clear Lake Shuttle to transport EZ Cruise customers, and was told that the shuttles were tied up shuttling for the Hotel Galvez.<sup>4</sup>
7. Complainants have known for months that the Port has charged and collected trip charges from Clear Lake Shuttle and other similarly situated companies. Thus they knew that what Mr. Harrison was telling them was patently false. Moreover, having tried to hire Clear Lake Shuttle themselves, complainants knew they were in the business, but apparently chose not to issue a subpoena to them, when they asked Your Honor to issue numerous subpoenas to entities paying trip charges in October 2014. In essence, Complainants ask to extend the deadlines in this proceeding by 90 days based on claims by a shuttle service they have known about for years, when they know the

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<sup>2</sup> See Exhibit A.

<sup>3</sup> See Page 25, Paragraph KK of Complainants' First Amended Verified Complaint.

<sup>4</sup> See *Deposition of Jason Hayes*, pp. 153-157, attached hereto as Exhibit D.

claims are false based on records they have previously received. Obviously, there is no "good cause" to extend the deadlines as Complainants request.

8. Respondents are, quite frankly, shocked that Complainants would knowingly assert such patently false claims in support of their Motion. At the very least, the Motion should be denied.

WHEREFORE, PREMISES CONSIDERED, Respondents respectfully request that the Commission deny Respondents' Emergency Motion to Enlarge the Time to File Documents and require Complainants to file their proposed findings of fact, brief, and appendix on May 1, 2015, in accordance with Your Honor's January 14, 2015, Order Amending September 30, 2014, Discovery and Briefing Schedule.

Respectfully submitted,

McLeod, Alexander, Powel & Apffel, P.C.

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ATTORNEYS FOR THE BOARD OF TRUSTEES  
OF THE GALVESTON WHARVES AND THE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of April, 2015, a copy of the foregoing document was served by email and certified mail, return receipt requested on Complainants' counsel of record.

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Anthony P. Brown